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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
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10/538,047

06/08/2005

Erich Albrecht

265-181

1443

23117

7590

05/30/2007

NIXON & VANDERHYE, PC  
901 NORTH GLEBE ROAD, 11TH FLOOR  
ARLINGTON, VA 22203

EXAMINER

BROWN, MICHAEL A

ART UNIT

PAPER NUMBER

3772

MAIL DATE

DELIVERY MODE

05/30/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                               |                                 |  |
|------------------------------|-------------------------------|---------------------------------|--|
| <b>Office Action Summary</b> | Application No.<br>10/538,047 | Applicant(s)<br>ALBRECHT ET AL. |  |
|                              | Examiner<br>Michael Brown     | Art Unit<br>3772                |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8 and 9 is/are rejected.
- 7) ☒ Claim(s) 6 and 7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>6-8-05</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Albrecht '677.

Spahn discloses in figures 1-4 a device for applying ventrally or dorsally directed translatory force into a lower leg comprising a thigh bar arm 10, a lower-leg bar arm (5, 20), a fixation device 24, that can be secured to the lower leg, a spring device 14, the lower bar arm includes a shorter bar arm 20 and a longer bar arm 5, both bar arms are swivel (at 11), relative to the thigh bar and swivel relative to one another (at 7, 11 and 19), the shorter bar is coupled at its distal end to the fixation device (the distal end of 20 is coupled to 24 via 5) and the longer bar arm 5 is coupled with its distal end to the fixation device in an area farther away from the knee (fig. 2) and the two lower bars are swivel about the same swivel axis 11.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-5 and 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spahn in view of Young '917.

Spahn discloses in figures 1-4 a device for applying a ventrally or dorsally directed translatory force onto a lower leg in the area of the knee joint for treatment, substantially as claimed. However, Spahn doesn't disclose the two bars coupled at their distal ends by bolts, or an oblong hole in the distal end of the one of the lower bars. Young teaches in figure 2 a limb brace comprising a bolt 19, a bar 11, having an oblong hole (at 11a) and a fixation device 15. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the bolt as taught by Young could be substituted for the fastener disclosed by Spahn in order to be able to replace and adjust the bolt in the oblong hole as taught by Young. The oblong hole would allow the bolt to move upward or downward in order to adjust the fixation device as taught by Young. The fixation device as taught by Young could be substituted for the fixation device disclosed by Spahn in order to be able to adjust the fixation device. The fixation device as taught by Young is half shells that are adjustable. It is clear that the thigh bar could have an oblong hole therein in order to be able to adjust the thigh bar upward or downward to the lower bar. The oblong hole could extend in the longitudinal direction of the thigh bar.

***Allowable Subject Matter***

Claims 6-7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Koetke, Opahle '235, Albrecht '677 and Davis, each discloses a knee brace.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is 571-272-4972. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

M. Brown  
May 22, 2007



MICHAEL A. BROWN  
PRIMARY EXAMINER